



SUPER LAW GROUP, LLC

May 23, 2017

Via Certified Mail, Return Receipt Requested

Inwood Material Terminal, LLC

1 Sheridan Blvd.
Inwood, NY 11906

11 Commercial Street
Plainview, NY 11803

47 Herb Hill Rd.
Glen Cove, 11542

Nassau Ready Mix Corp.

1 Sheridan Blvd.
Inwood, NY 11906

South Island Industries, Inc.

2 Rason Rd.
Inwood, NY 11096

Nassau Stone, LLC

1 Sheridan Blvd.
Inwood, NY 11906

Inwood Dock, LLC

1 Sheridan Blvd.
Inwood, NY 11906

Sciarrino Group, LLC

1 Sheridan Blvd.
Inwood, NY 11906

Frank Sciarrino

1 Sheridan Blvd.
Inwood, NY 11906

Angela Sciarrino

2 Rason Rd.
Inwood, NY 11096

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern,

We are writing on behalf of Raritan Baykeeper, Inc.¹ (d/b/a "NY/NJ Baykeeper") and Connecticut Fund For the Environment² d/b/a "Save the Sound" (collectively "Notifiers") to notify you of their intent to file suit against Inwood Material Terminal, LLC, Nassau Ready Mix Corp., South Island Industries, Inc., Nassau Stone, LLC, Inwood Dock, LLC, Sciarrino Group, LLC, Frank Sciarrino, and Angela Sciarrino (collectively, "IMT") pursuant to Section 505(a) of

¹ Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), is a non-profit public interest 501(c)(3) corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy Jamaica Bay, which is polluted by industrial stormwater runoff discharged by facilities that are or should be covered by the General Permit.

² Connecticut Fund for the Environment, Inc. (d/b/a Save the Sound) is a not-for-profit 501(c)(3) organization founded in 1978 with offices in New Haven, Connecticut and Mamaroneck, New York. The mission of Save the Sound is to protect and improve the land, air and water of Connecticut and Long Island Sound through legal and scientific expertise. Save the Sound represent approximately 4,800 member households, many of whom use and enjoy Glen Cove, Hempstead Bay, and the wider waters of Long Island Sound.

the federal Clean Water Act ("CWA")³ for violations of the CWA. Notifiers further notify IMT for violations of the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., pursuant to the citizen suit provision of that act, Section 7002(a)(1), 42 U.S.C. § 6972(a)(1).

Notifiers intend to file suit, as organizations and on behalf of their adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.⁴

Notifiers intend to take legal action because IMT is discharging polluted stormwater from IMT's ready mix concrete/material recycling facilities ("the Facilities") to the waters of the United States without a permit in violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁵ The Facilities are located at:

- 1 Sheridan Blvd, Inwood, NY 11906 (Section, Block & Lot: 40 L 652) (the "Sheridan Site")
- 2 Rason Rd., Inwood, NY 11096 (Section, Block & lot: 40 A 1144) (the "Rason Site")
- 47 Herb Hill Rd., Glen Cove, 11542 (Section, Block & Lot: 21 A 664) (the "Herb Hill Site")

IMT has not, at any of the Facilities, applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁶ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

Notifiers also intend to take legal action because IMT is engaged in open dumping at the Rason Site, a site located adjacent to federally designated wetlands, and has illegally used the site as an open dump, in violation of RCRA Section 4005(a), 42 U.S.C. § 6945(a), and 40 C.F.R. § 257.

³ 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

⁴ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

⁵ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁶ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html> (last visited Jan. 24, 2013). This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from IMT’s three facilities introduce a host of industrial pollutants into the following nearby waterbodies:

- The Sheridan Site – Jamaica Bay via Mott Basin
- The Rason Site – Jamaica Bay via Head of Bay
- The Herb Hill Site – Glen Cove Creek, a tributary to Hempstead Bay and the Long Island Sound

The Clean Water Act provides a regulatory regime for mitigating the worst impacts of industrial stormwater pollution, but IMT’s sites are not in compliance with the main requirements of that regime.

II.

CLEAN WATER ACT STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. **IMT Is Discharging Stormwater Associated with Industrial Activity to Waters of the United States Without a Permit.**

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.⁸ IMT’s industrial activity at the Facilities has caused and continues to cause a “discharge of pollutants” within the meaning of Section 502(12) of the

⁷ See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, http://ofimpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A (last visited Oct. 14, 2014).

⁸ See CWA §§ 301(a), 402.

CWA⁹ and a “stormwater discharge associated with industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facilities on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁰ The Facilities have exposed and continues to expose industrial pollutants to stormwater, at a minimum, by (a) receiving, storing, processing, and transporting construction and demolition debris outside or otherwise exposing them to the elements, b) (a) receiving, storing, processing, and transporting concrete, sand, aggregate, Portland cement and other materials outside or otherwise exposing them to the elements, and (c) from vehicles entering and leaving the Facilities that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facilities in stormwater discharges.

1. The Sheridan Site & the Herb Hill Site

The activities at these two sites include but are not limited to the purchase, collection, processing, and outdoor storage of sand, aggregate, construction and demolition debris, Portland cement, and other substances used in the manufacturing ready mix concrete. Both sites are registered with DEC to process construction and demolition debris (the Sheridan Site under Authorization number 30W39R, and the Herb Hill Site under 30W24R). Notifiers believe these sites house a fleet of trucks, ready mix concrete plants, truck washing equipment, and materials piles that are all potential sources of industrial pollutants. IMT mixes raw materials into concrete on these sites, transfers the concrete to trucks, and washes out trucks.

In carrying out these activities at these sites, IMT stores and handles materials in a manner that exposes them to precipitation and snowmelt. In particular, raw materials piles, machinery, and trucks that have completed their deliveries can release pollutants onto the two sites including aggregate, sand, Portland cement, cement additives, waste materials reused in concrete manufacture and other minerals such as shale, clay, limestone, slate, slag, pumice, fly ash, baghouse settled dust, oil and grease. If specialty concretes or casting/forming products are demanded by a customer, these sites may also house form release agents, latex sealants, and bitumastic coatings. All of these wastes can release solids that suspend or dissolve in stormwater, lead, iron, zinc, oil and grease, Chemical Oxygen Demand and pH altering pollutants into Glen Cove Creek at the Herb Hill Site, and Jamaica Bay at the Sheridan Site.¹¹

2. The Rason Site

The activities at the Rason Site support the activities at IMT’s other facilities and include but are not limited to the collection, processing, and outdoor storage of sand, aggregate, construction and demolition debris, and other substances used in the manufacturing of ready mix concrete. Past

⁹ 33 U.S.C. § 1362(12).

¹⁰ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. *See, e.g.*, 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

¹¹ *See* EPA, “Industrial Stormwater Fact Sheet Series, Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities,” available at <http://cfpub.epa.gov/npdcs/stormwater/swsectors.cfm> (last visited Jan. 27, 2013).

industrial activity at the Rason Site included recycling of construction and demolition debris and significant industrial materials remain at the site today from these past industrial activities as well. These active and historic sources of pollution can release solids that suspend or dissolve in stormwater, lead, iron, zinc, oil and grease, Chemical Oxygen Demand and pH altering pollutants into nearby Jamaica Bay (and abutting wetlands) via adjacent storms drains that are part of the Municipal Separate Storm Sewer System (MS4).¹²

In addition, at all the Facilities, machinery may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facilities may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because IMT fails to adequately fence, shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Stormwater picks up sediment, oil, grease, metals, paints, plastic, solvents, nutrients, pathogens, particulates, dust and other solids that can dissolve or suspend in stormwater, and other trash and pollutants associated with the Facilities' operations. Stormwater, objects, and debris are then conveyed off-site either directly or, like at the Rason Site, via MS4 drains and into nearby waters of the United States. Further, vehicles at the Facilities track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, waters of the United States.

Polluted stormwater discharges flow from the Facilities into Mott Basin, Jamaica Bay, Glen Cove Creek, all of which are "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, a "navigable water" as defined in Section 502(7) of the CWA. IMT does not have a NPDES permit for these discharges of pollutants. Thus, IMT is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

B. IMT is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

IMT is engaged in the business of manufacturing ready mix concrete, and recycling and processing construction and demolition debris, and therefore is an industrial discharger under Standard Industrial Classification ("SIC") Codes 3273 and 5093, which are industrial activities included under Sector E and N, respectively, of the General Permit. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, IMT must apply for

¹² See EPA, "Industrial Stormwater Fact Sheet Series, Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities," available at <http://cfpub.epa.gov/npdes/stormwater/swsectors.cfm> (last visited Jan. 27, 2013) and EPA, "Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities," available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_n_scraprecycling.pdf.

coverage under the General Permit or an individual NPDES permit for IMT's discharges of polluted stormwater at all three of the Facilities. In addition, IMT must apply for an individual NPDES permit if any of the Facilities is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under the General Permit or an individual permit, IMT is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).¹³

To be eligible to discharge under the General Permit, IMT must, at all three Facilities, submit to DEC a registration form called a "Notice of Intent."¹⁴ Notice of Intent forms are available online from DEC.¹⁵ To register, IMT is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.¹⁶ IMT has failed to prepare and file a Notice of Intent or an application for an individual permit.¹⁷

C. IMT is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, IMT must comply at all times with the requirements of the General Permit (or an individual permit).¹⁸ By discharging stormwater associated with industrial activity without complying with the General Permit, IMT is violating CWA Sections 301(a) and 402(a) and (p).¹⁹ The main General Permit requirements that IMT has failed and continues to fail to meet at its three Facilities are explained further below.

¹³ Sections 301(a) and 402(a) and (p) make it unlawful for IMT to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require IMT to apply for a NPDES permit that covers IMT's discharges of stormwater associated with industrial activity.

¹⁴ See General Permit, Part I.E.3. In notifying IMT that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Notifiers do not concede that all of the activities conducted at the Facilities are necessarily eligible for coverage under that permit. For example, if the Facilities are discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

¹⁵ See http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

¹⁶ See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at: http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

¹⁷ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facilities.

¹⁸ This section discusses the compliance requirements of the General Permit. If IMT elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus IMT will still be required to comply with all of the following.

¹⁹ Sections 301(a) and 402(a) and (p) make it unlawful for IMT to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

1. IMT has not developed and implemented a Stormwater Pollution Prevention Plan at the Facilities.

Before submitting a Notice of Intent, IMT must prepare, make available, and implement Stormwater Pollution Prevention Plans (“SWPPP”) at the three Facilities in accordance with schedules established in the General Permit.²⁰ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²¹

Among other things, the SWPPPs must include: a general site description, a general location map identifying the location of the facilities and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.²²

IMT has not developed and implemented legally compliant SWPPPs at the Facilities, as required by Part III of the General Permit.²³

2. IMT has not implemented control measures and Best Management Practices that meet the best available technology standards.

IMT cannot legally discharge stormwater under the General Permit until IMT implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the three Facilities.²⁴ The selected measures must reduce the discharge of pollution from the Facilities to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.²⁵ The General Permit’s effluent limits include both numeric limits specific to certain sectors,²⁶ as well as non-numeric technology-based effluent limits that apply to all facilities.²⁷ These non-numeric technology-

²⁰ See General Permit Part III.B.

²¹ See General Permit Part III.A.

²² See General Permit Part III.C.

²³ Notifiers believe no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

²⁴ See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

²⁵ General Permit Part I.B.1.a; see also Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

²⁶ See General Permit, Part VIII.

²⁷ See General Permit, Part I.B.1.a.2.

based restrictions include minimizing the exposure of pollutants to stormwater²⁸ and minimizing the discharge of pollutants in stormwater²⁹ “to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”³⁰

IMT has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

3. IMT has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.

IMT must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³¹ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³² Records of this inspection must be kept for five years.³³

In addition, qualified facility personnel must carry out routine inspections at least quarterly.³⁴ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.³⁵ Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.³⁶ In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;³⁷
- conduct visual monitoring of stormwater discharges at least quarterly;³⁸
- perform an annual dry weather inspection to detect non-stormwater discharges;³⁹

²⁸ See General Permit, Part I.B.1.a.2.a.

²⁹ See General Permit, Part I.B.1.a.2.f.

³⁰ General Permit, Part I.B.1.

³¹ See General Permit, Part IV.A.1

³² See General Permit, Part IV.A.1

³³ See General Permit, Part IV.A.2

³⁴ See General Permit, Part III.C.7.b.2.

³⁵ See General Permit, Part III.C.7.b.1 and b.3.

³⁶ See General Permit, Part IV.B.3.

³⁷ See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

³⁸ See General Permit, Part IV.B.1.a.

³⁹ See General Permit, Part IV.B.1.b.

- inspect, sample and monitor discharges from coal pile runoff;⁴⁰
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴¹
- document storm events during which any samples are taken;⁴²
- document all of these monitoring activities;⁴³
- keep records of the monitoring with the Facility's SWPPP;⁴⁴ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁴⁵ For Facilities that discharge through a municipal separate storm sewer system, signed copies of these reports must be provided to the sewer system operator as well.⁴⁶

Because IMT engages in industrial activities associated with Sectors E and N, sampling is required for:

- Total Mercury;
- pH
- PCBs;
- Total Suspended Solids;
- Chemical Demand Oxygen;
- Oil and Grease;
- Total Recoverable Aluminum;
- Total Recoverable Cadmium;
- Total Chromium;
- Total Recoverable Copper;
- Total Recoverable Iron;
- Total Recoverable Lead;
- Total Recoverable Zinc;
- Benzene;
- Ethylbenzene
- Toluene; and
- Xylene.^{47 48}

Notifiers are not necessarily aware of all industrial activities taking place at the Facilities. To the extent that industrial activities other than the above are carried out at the Facilities, other

⁴⁰ See General Permit, Part IV.B.1.d.

⁴¹ See General Permit, Part IV.B.1.f.

⁴² See General Permit, Part IV.B.2.c.

⁴³ See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, *see generally* Part IV.E.

⁴⁴ See General Permit, Part IV.E.

⁴⁵ See General Permit, Part IV.B.1 and 2 and Part IV.C.

⁴⁶ See General Permit, Part IV.C.4.b.

⁴⁷ See General Permit, Part VIII, Sector N.

⁴⁸ See General Permit, Part VIII, Sector E.

sampling may be required as well.⁴⁹ This notice provides IMT with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

IMT has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. IMT also has failed to retain records and submit monitoring reports to DEC [and your sewer system operator], as required by, at least, Parts IV and VIII of the General Permit.

4. IMT has failed to comply with additional requirements located in Part VIII of the General Permit.

As noted above, the General Permit contains various requirements specific to Sectors N (material recycling) and E (ready mix concrete). These requirements, some of which are referenced above, are collected in Part VIII of the General Permit.

For Sector E, they include:

- A requirement to include in your SWPPP and annual reports to DEC a description of measures that ensure that process wastewater that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with a separate SPDES permit or are recycled.
- A requirement to identify in your SWPPP the locations of the following, if applicable:
 - Bag house or other dust control device;
 - Recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.
- A requirement that your site inspections shall take place while the Facility is in operation and shall include all of the following areas that are exposed to stormwater:
 - Material handling areas
 - Aboveground storage tanks
 - Hoppers or silos,
 - Dust collection/containment systems
 - Truck wash down/equipment cleaning areas
- A requirement to sweep the Facility weekly to prevent or minimize the discharge of cement and aggregate.
- A requirement to, if practicable, store cement and any other fine granular solids in enclosed silos or hoppers, buildings, or under other covering.

⁴⁹ See General Permit, Part VIII.

For Sector N, they include:

- The site map shall identify the locations where the following activities or sources may be exposed to precipitation/surface runoff:
 - Locations of haul and access roads;
 - Scrap and waste material storage areas;
 - Outdoor scrap and waste processing equipment;
 - Areas where materials are sorted, transferred, stockpiled; and
 - Containment areas.
- A requirement that the SWPPP include a program to control materials received for processing:
 - Notifying suppliers/public which scrap materials will not be accepted at the facility or are only accepted under certain conditions;
 - Develop and implement procedures to inspect inbound shipments of recyclable materials;
 - Develop and distribute educational material targeting the public and/or commercial drivers of inbound vehicles; and
 - Training targeted for personnel engaged in the inspection and acceptance of inbound recyclable materials.
- A requirement that the SWPPP address BMPs to minimize contact of particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Good housekeeping measures, including frequent sweeping of haul and access roads and the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers; and
 - Good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas.
- A requirement that the SWPPP describe BMPs to minimize contact of stormwater runoff with stockpiled materials, processed materials and non-recyclable wastes. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Store the equivalent one day's volume of recyclable materials indoors;
 - Containment of diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading installed where appropriate to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;
 - Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;
 - Cover containment bins, dumpsters, roll off boxes;
 - Permanent or semi permanent covers over areas where materials are transferred, stored or stockpiled;
 - Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system; and

- Sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of sediments.
- A requirement that the SWPPP address BMPs to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document consideration of the following BMPs (or their equivalents):
 - Prohibit the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;
 - Disconnect or seal off all floor drains connected to the storm sewer system;
 - Drums containing liquids, especially oil and lubricants, should be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;
 - Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans shall be inspected for leaks and potential overflows and all liquids properly disposed of in accordance with RCRA requirements; and
 - Liquid wastes, including used oil, shall be stored in materially compatible and non-leaking containers, and be disposed or recycled in accordance with all requirements under the RCRA, and State or local requirements.⁵⁰

IMT's activities are included in the definition of industrial activity to which the CWA applies. Therefore, at each of its three Facilities, IMT must obtain coverage under and comply with the requirements of the General Permit, including those specific to IMT's industrial activities, as described in Part VIII and outlined above. IMT has failed to obtain coverage under the General Permit and comply with these additional requirements.

In sum, IMT's discharges of stormwater associated with industrial activities without a permit, IMT's failure to apply for permit coverage, and IMT's failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

III.

RCRA STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

As discussed above, past industrial activity at the Rason Site included recycling of construction and demolition debris, and historical imagery shows that significant industrial materials have been disposed of at the site and remain at the site today,

⁵⁰ See General Permit, Part VIII, Sector N.

RCRA prohibits the open dumping of solid waste or hazardous waste and the operation of open dumps.⁵¹ Pursuant to RCRA Sections 1008(a), 4004(a), and 4005, 42 U.S.C. §§ 6907(a), 6944(a), and 6945, the EPA promulgated criteria distinguishing sanitary landfills from open dumps and determining what actions constitute open dumping; the standards are at 40 C.F.R. Part 257. Any facility used for the disposal of solid or hazardous waste that does not meet EPA's standards is an illegal open dump.⁵² Furthermore, any solid or hazardous waste disposal practices that are not in compliance with EPA's standards constitute open dumping.⁵³

RCRA and EPA regulations define "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."⁵⁴ "Solid waste" is defined as "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities . . ."⁵⁵ "Hazardous waste" is "a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-- (A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."⁵⁶

Water from precipitation events collects, pools, and flows through large piles of debris at the Rason Site. This water likely picks up, among other things lead, iron, zinc, oil and grease, Chemical Oxygen Demand and pH altering pollutants, and runs off into nearby wetlands and Jamaica Bay via adjacent storms drains that are part of the Municipal Separate Storm Sewer System (MS4)

To comply with RCRA, a solid waste disposal facility must meet certain criteria. First, "[f]acilities or practices in floodplains shall not restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources."⁵⁷ The entire Rason Site is in a floodplain and regularly causes a reduction in the water storage capacity of that floodplain. IMT's practices result in the washout of solid and/or hazardous water in a hazardous manner.

⁵¹ See RCRA Section 4005(a), 42 U.S.C. § 6945(a).

⁵² See 40 C.F.R. §§ 257.1 (a)(1) ("Facilities failing to satisfy [the criteria of Part 257] are considered open dumps, which are prohibited under section 4005 of the Act."), 257.2 ("Open dump means a facility for the disposal of solid waste which does not comply with [Part 257]."). A facility is simply any "land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste." *Id.*

⁵³ See 40 C.F.R. § 257.1 (a)(2) ("Practices failing to satisfy [the criteria of Part 257] constitute open dumping, which is prohibited under section 4005 of the Act.").

⁵⁴ 42 U.S.C. § 6903(3); 40 C.F.R. § 257.2.

⁵⁵ 42 U.S.C. § 6903(27); 40 C.F.R. § 257.2.

⁵⁶ 42 U.S.C. § 6903(5).

⁵⁷ 40 C.F.R. § 257.3-1(a).

Second, the “facility shall not cause a discharge of pollutants into waters of the United States that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act, as amended.”⁵⁸ For all the reasons discussed above, IMT is discharging pollutants from a point source to Jamaica Bay without MSGP coverage, or an individual NPDES permit, and thus is also violating the Clean Water Act.

In sum, IMT is violating RCRA’s prohibition against open dumping. IMT is engaging in the disposal of solid and/or hazardous waste by discharging, depositing, and placing discarded material near to and in Jamaica Bay itself, in violation of RCRA and EPA regulations.⁵⁹

Notifiers intend to sue IMT as owner and operator of the Rason Site for maintaining an open dump in violation of EPA regulations promulgated in accordance with RCRA.⁶⁰ IMT’s ongoing disposal of solid and/or hazardous waste is illegal and subject to liability.⁶¹

IV.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The entities and individuals identified collectively in this letter as IMT are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. Notifiers believe IMT has operated the Facilities for at least five years. IMT has operational control over the day-to-day industrial activities at the Facilities. Therefore, IMT is responsible for managing stormwater at the Facilities in compliance with the CWA. IMT is also responsible for operating the illegal open dump at the Rason Site. Notifiers hereby put IMT on notice that if Notifiers subsequently identify additional persons as also being responsible for the violations set forth above, Notifiers intend to include those persons in this action.

V.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facilities located at: 1 Sheridan Blvd, Inwood, NY 11906 (Section, Block & Lot: 40 L 652); 2 Rason Rd., Inwood, NY 11096 (Section, Block & lot: 40 A 1144); 47 Herb Hill Rd., Glen Cove, 11542 (Section, Block & Lot: 21 A 664).

⁵⁸ 40 C.F.R. § 257.3-3(a).

⁵⁹ 42 U.S.C. § 6945(a); 40 C.F.R. Part 257.

⁶⁰ 42 U.S.C. § 6945(a); 40 C.F.R. Part 257.

⁶¹ 42 U.S.C. § 6972(a)(1)(b); 40 C.F.R. Part 257.

VI.

DATES OF VIOLATION

Every day upon which IMT has failed to apply for permit coverage since IMT first commenced operations at the three Facilities and discharged polluted stormwater is a separate violation of Section 301(a) of the CWA and EPA's regulations implementing the CWA.⁶² These days of violation have continued consecutively everyday for at least the last five years.

Additionally, IMT has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day since IMT commenced operations at the Facilities on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

If IMT seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which IMT claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Finally, at the Rason Site, IMT has operated an illegal open dump in violation of RCRA and EPA regulations, and has done so for at least the last five years.

IMT is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA and RCRA evidenced by information that becomes available to the Notifiers after the date of this Notice of Intent to File Suit.⁶³ These violations are ongoing, and barring full compliance with the permitting requirements of the CWA and RCRA, these violations will continue.

VII.

RELIEF REQUESTED

Notifiers will ask the court to order IMT to comply with the Clean Water Act and RECRA, to pay penalties, and to pay Notifiers' costs and legal fees.

⁶² See also 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

⁶³ See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.")

First, Notifiers will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Notifiers will seek an order from the Court requiring IMT to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁶⁴ each separate violation of the CWA subjects IMT to a penalty not to exceed \$37,500 per day for each violation that occurred prior to November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.⁶⁵ Notifiers will seek the full penalties allowed by law.

Third, pursuant to Section 505(d) of the CWA, Notifiers will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

Last, in addition to civil penalties and attorney's fees, IMT will seek declaratory and injunctive relief to prevent further violations of RCRA at the Rason Site, to remove all the waste that IMT illegally dumped in the surrounding environment, and to manage the Facility in a manner that prevents further RCRA violations pursuant to Section 7002(a), 42 U.S.C. § 6972(a), and such other relief as permitted by law.

VIII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper).
52 West Front Street
Keyport, NJ 07735
(732) 888-9870
Attn.: Debbie Mans, Executive Director

Connecticut Fund for the Environment, Inc. (d/b/a Save the Sound)
900 Chapel Street, Upper Mezzanine
New Haven, CT 06510
(203) 787-0646
Attn: Roger Reynolds, Legal Director

⁶⁴ 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁶⁵ 40 C.F.R. § 19.2.

IX.

IDENTIFICATION OF COUNSEL

Notifiers are represented by legal counsel in this matter. The name, address, and telephone number of Notifiers' attorneys are:

Edan Rotenberg, Esq.
Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

X.

CONCLUSION

The foregoing provides more than sufficient information to permit IMT to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁶⁶

If IMT has developed a SWPPP, Notifiers request that IMT send a copy to the undersigned attorney.⁶⁷ Otherwise, Notifiers encourage IMT to begin developing a SWPPP immediately after receiving this letter and ask that IMT please inform the undersigned attorney of IMT's efforts so that Notifiers can work with IMT to avoid disputes over the contents of the SWPPP.⁶⁸

During the sixty-day notice period, Notifiers are willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. Among other

⁶⁶ 40 C.F.R. § 135.3(a).

⁶⁷ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁶⁸ Notifiers will not send a new notice letter in response to any effort IMT makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

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matters, Notifiers understand that the Herb Hill site in Glen Cove will be redeveloped within 2-3 years as part of the Garvies Point project and believe that it would be productive to immediately discuss measures to contain this site's discharge of industrial stormwater in the interim instead of awaiting the results of litigation. If IMT wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,

A handwritten signature in black ink, reading "Nicholas W. Tapert". The signature is written in a cursive, flowing style.

Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

cc:

Scott Pruitt, Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Catherin R. McCabe, Acting EPA Region 2 Administrator
Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Basil Seggos, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011